

OFFICE COPY

Prepared By _____

Approved By _____

An act to amend Section 17 of, and to add Chapter 4 (commencing with Section 1234) to Title 8 of Part 2 of, the Penal Code, relating to felons, and declaring the urgency thereof, to take effect immediately.

DRAFT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime ~~which~~ that is punishable with death ~~or~~, by imprisonment in the state prison, or by imprisonment in a county jail for more than one year. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail for more than one year, or by fine or imprisonment ~~in the~~ a county jail for one year or less, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail for more than one year.

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Youth Authority for a crime punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail for more than one year, or by fine or imprisonment ~~in the~~ a county jail for one year or less, the offense shall, upon the discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor, or;

(2) The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to Section 290, and for which the trier of fact has found the defendant guilty.

SEC. 2. Chapter 4 (commencing with Section 1234) is added to Title 8 of Part 2 of the Penal Code, to read:

CHAPTER 4. INCARCERATION OF LOW LEVEL FELONS IN COUNTY JAILS

1234. (a) This act shall be known and may be cited as the Low Level Offender Act of 2011.

(b) Notwithstanding any other provision of law, every offense declared to be a felony, or to be punishable by imprisonment in a state prison shall instead be punishable by imprisonment in a county jail, unless one of the following exceptions applies:

(1) The person is convicted or was previously convicted of an offense for which the person is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1.

(2) The person is convicted or was previously convicted of a serious felony as defined in Sections 1192.7 and 1192.8, or a violent felony, as defined in Section 667.5.

(3) The person is convicted or was previously convicted of a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(4) The person is convicted of a crime that subjects him or her to the requirements of Section 1170.12.

(c) Any person serving a term in a county jail pursuant to subdivision (b) shall not be subject to the requirements of Chapter 8 (commencing with Section 3000) of Title 1 of Part 3.

(d) The provisions of subdivision (b) shall apply to any felony committed on or after July 1, 2011.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2011 at the earliest possible time, it is necessary that this act take effect immediately.

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LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Felons.

Existing law provides that a felony is a crime which is punishable with death or by imprisonment in the state prison. Existing law generally regulates the provision of parole for felons incarcerated in the state prison.

This bill would provide that a felony is a crime which is punishable with death, or by imprisonment in the state prison, or by imprisonment in a county jail for more than one year. The bill would create the Low Level Offender Act of 2011. The bill would provide that, notwithstanding any other provision of law, any felony committed on or after July 1, 2011, shall be punishable by imprisonment in a county jail instead of state prison, unless the person is convicted or was previously convicted of an offense for which the person is required to register as a sex offender, or the person is convicted or has been convicted of a serious felony, a violent felony, or a sexually violent felony,

as specified, or the person has certain other prior felony convictions, as specified. The bill would also provide that persons sentenced as felons under those provisions to serve their time in county jails would not be subject to provisions of law establishing parole.

By transferring the incarceration of certain felons from the state prisons to county jails, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.